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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,833	03/22/2004	Raymond Giannelli	C016/7080US5	4229
21127 7590 02/22/2008 RISSMAN JOBSE HENDRICKS & OLIVERIO, LLP 100 Cambridge Street Suite 2101 BOSTON, MA 02114				
EXAMINER NGUYEN, TAM M				
ART UNIT		PAPER NUMBER		
3764				
MAIL DATE		DELIVERY MODE		
02/22/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/806,833

Applicant(s)

GIANNELLI ET AL.

Examiner

TAM NGUYEN

Art Unit

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Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-21, 23 and 36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 10-21, 23 and 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statements(s) (PTO/SB08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Paper No(s)/Mail Date _____
- 6) ☐ Other: _____
- 7) ☐ Notices of Informal Patent Application
- 8) ☐ Paper No(s)/Mail Date 12-19-07

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "top bearings... 36b". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities:
On Page 8, in lines 28-29, is the phrase "forward four bar linkage legs 26a, 26d". It should be rephrased as --forward four bar linkage legs 26a, **26b**-- to correspond to Fig. 9.
On Page 13, in lines 22-23, is the phrase "forwardmost, 26a', 26d' and a rearward 26a, 26d postion". It should be rephrased as --**rearward**, 26a', 26d' and a **forwardmost** 26a, 26d postion" to correspond to Fig 5A.

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On Page 14, in line 11, is the term "backwardmost". It should be rephrased as --forwardmost-- to correspond to Fig 5A.

On Page 14, in line 13, is the term "forwardmost". It should be rephrased as --backwardmost-- to correspond to Fig 5A.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10-21, 23 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Root (326,247).

3. As to claims 10-21, 23 and 36, Root discloses an apparatus comprising a pair of left and right foot pedals (I) each having a foot sole receiving surface, the foot pedals being mounted on a frame (A) for movement in a back and forth direction along an arcuate path between forwardmost and rearwardmost positions, a pair of left and right manually graspable input arms/handles (K) each pivotally interconnected to a respective one of the left and right foot pedals such that the left handle pivots forwardly together with forward movement of the left pedal and backwardly together with backward movement of the left pedal, and the right handle pivots forwardly together with forward movement of the right pedal and backwardly together with backward movement of the

right pedal wherein the foot pedals are adjustable to move in an arcuate path of selected incline, the input arms are adjustable to move in a pivot path of selected degree of pivot, the pedals and input arms are interconnected to a pivot mechanism (I,T,S) adjustable to a selected degree of pivot that adjust the arcuate path of the foot pedals and the degree of pivot of the input arms, the arms and pedals are interconnected to a reciprocating mechanism (F) that directs one of the left or right pedals to travel in the back and forth direction while simultaneously directing the other of the left or right pedals to substantially always travel in an opposite direction, the reciprocating mechanism comprises a rotating mechanism having a pair of pivot points (on disk F), disposed at substantially opposing 180 degree positions, interconnected to one of the left or right pedals and arms and the pedals and arms are interconnected to a respective pivot point by a link mechanism (J,H) (see Figs. 1-3 & lines 37-49 and 59-90). Root further discloses that foot pedals pivot or rotate less than about three degrees during movement between the forwardmost and backwardmost positions. As a matter of fact, it does not appear that the pedals pivot at all with respect to the axis defined by the pivot axis, M (see Fig. 1). Root also discloses that each of the foot pedals are mounted on the frame via a four bar linkage mechanism (A, G, I and the combination of J & H) (see Fig. 1).

Response to Arguments

4. Applicant's arguments with respect to claims 10-21, 23 and 36 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Yu '296, Shifferaw '088 and Wang '224 each disclose an apparatus comprising a pair of left and right foot pedals each having a foot sole receiving surface, the foot pedals being mounted on a frame for movement in a back and forth direction along an arcuate path between forwardmost and rearwardmost positions, a pair of left and right handles each pivotally interconnected to a respective one of the left and right foot pedals such that the left handle pivots forwardly together with forward movement of the left pedal and backwardly together with backward movement of the left pedal, and the right handle pivots forwardly together with forward movement of the right pedal and backwardly together with backward movement of the right pedal.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TAM NGUYEN whose telephone number is (571)272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on 571-272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

February 11, 2008

/Tam Nguyen/
Examiner, Art Unit 3764

/LoAn H. Thanh/
Supervisory Patent Examiner, Art Unit 3764